

1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT PART 11

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
167N-05

5 -against-

TRIAL

6 MARK ORLANDO,

Defendant.

7 - - - - -X

8 262 Old Country Road
9 Mineola, New York
10 June 2, 2005

11
12 B e f o r e:

13 HON. DAVID P. SULLIVAN, Supreme Court Justice

14 A p p e a r a n c e s:

15
16 HON. DENIS DILLON
District Attorney, Nassau County
17 By: ROBERT T. HAYDEN, ESQ.
Assistant District Attorney
18

19 DENNIS LEMKE, ESQ.
Attorney for Defendant
20 114 Old Country Road
21 Mineola, N.Y. 11501
22

23 Mary Ocskai
Official Court Reporter
24

25 **COPY**

Proceedings

1 THE CLERK: Case on trial, indictment 167N-05,
2 People versus Mark Orlando.

3 Appearances for the record, please.

4 MR. HAYDEN: Robert T. Hayden for the People,
5 Your Honor.

6 THE CLERK: Representing Mr. Orlando.

7 MR. LEMKE: Dennis Lemke. We're ready.

8 THE CLERK: People ready?

9 MR. HAYDEN: Yes.

10 THE CLERK: Let the record reflect the
11 presence of Mr. Orlando. The prospective jurors are not
12 in the courtroom at this time.

13 THE COURT: Trial continued.

14 Just for the record I have indicated already to the
15 potential jury pool, I will continue to indicate to the
16 next pool of jurors, that this Court will not be
17 sequestering the jury on this case.

18 Also just for the record, I note no requests have
19 been made to transcribed the voir dire. That is not
20 being done.

21 MR. LEMKE: That is understood. Correct.

22 THE COURT: Mr. Lemke, I gave Mr. Hayden a
23 copy this morning and I want to give you a copy too, I
24 have a copy of Judge Honorof's short order with respect
25 to the hearings.

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1 Any preliminary matters before I bring the
2 remaining prospective jury pool in?

3 MR. LEMKE: None, Your Honor.

4 MR. HAYDEN: I have one brief thing, Your
5 Honor. I have a copy of prior convictions of one of my
6 witnesses, Tommy Flores. I have a copy for the Court,
7 and I have one for Mr. Lemke as well.

8 MR. LEMKE: Acknowledge receipt. Thank you,
9 Your Honor.

10 THE CLERK: We will mark this as Court exhibit
11 number V, Judge.

12 THE COURT: Court exhibit V.

13 We're going to bring the prospective jury panel in.

14 THE COURT OFFICER: Panel entering.

15 THE COURT: Good morning, everyone. This
16 courtroom is the one I use. I like it better. It's
17 more intimate, you know. I don't feel like I am
18 shouting.

19 What we're going to do is continue the process you
20 observed yesterday. What I mean by that is Mr. Paoli,
21 my clerk, will randomly pick fourteen names out to sit
22 here, and I will ask you some questions, and then the
23 attorneys will ask you some questions. Okay.

24 THE CLERK: When you hear your name called
25 please bring your belongings up, the questionnaires, and

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1 the court officer will direct you to your seat in the
2 jury box.

3 For seat number one, Michael Petrizi,
4 P-E-T-R-I-Z-I.

5 Seat number two, Michael Asquina, A-S-Q-U-I-N-A.
6 Mary Marino, M-A-R-I-N-O, seat number three.

7 Seat number four Anthony Lomangino,
8 L-O-M-A-N-G-I-N-O.

9 Seat number five, Dara Addonizio,
10 A-D-D-O-N-I-Z-I-O.

11 Seat number six, Katelyn Agostinacchio,
12 A-G-O-S-T-I-N-A-C-C-H-I-O.

13 Seat number seven, Jahamvikabe Pandya,
14 P-A-N-D-Y-A.

15 Set number eight, Christopher Delaney,
16 D-E-L-A-N-E-Y.

17 Seat number nine, George Waugh, W-A-U-G-H.

18 Seat number ten, Nabila Yaeoub, Y-A-E-O-U-B.

19 Rena Escueta, E-S-C-U-E-T-A.

20 Jody Hirsh, H-I-R-S-H.

21 Seat thirteen, Jennifer Byfield Williams.

22 Sagrario Rodriguez.

23 THE COURT: Good morning, ladies and
24 gentlemen, I appreciate your patience. I know this
25 process is a lot of delays, and you were waiting this

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1 morning and I apologize. Once we get a jury, though,
2 the case will move along quickly, and as I indicated,
3 all of you yesterday, we give you the, we say two weeks
4 from this Monday, but, you know, I anticipate getting
5 the case to the jury, that is to deliberate, prior to
6 that. I think I will keep it moving. So, I make that
7 promise to you.

8 You heard everything we discussed yesterday. I am
9 going, I will talk to you a little bit this morning in a
10 little more detail than I did with the second group
11 yesterday.

12 In the first row, you heard the basic principles of
13 law that the Court told you about yesterday. If anyone
14 has any problems following the law, raise your hand
15 now. In either row.

16 Anybody in the front row have a problem with the
17 time element, two weeks?

18 I will start here.

19 Yes, ma'am. What is your name? Number seven.

20 You have a problem sitting for approximately two
21 weeks?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: Got some commitments or something.

24 A PROSPECTIVE JUROR: I have back problem.

25 THE COURT: Medical condition.

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1 A PROSPECTIVE JUROR: Yes.

2 THE COURT: You wouldn't be able to
3 concentrate on the case.

4 Any objection?

5 MR. HAYDEN: No.

6 MR. LEMKE: No. Consent.

7 THE COURT: You can step down, ma'am.
8 You have a problem, number six.

9 A PROSPECTIVE JUROR: I have a wedding next
10 Friday. My roommate is getting married. I am in the
11 wedding party. So, I don't know.

12 THE COURT: Consent?

13 MR. HAYDEN: Yes.

14 MR. LEMKE: Yes.

15 THE COURT: Enjoy the wedding.

16 Yes.

17 A PROSPECTIVE JUROR: I have, I am a teacher,
18 end of the year is coming up. My kids have finals and
19 regents and I can't abandon them.

20 THE COURT: Sure. Any objection?

21 MR. HAYDEN: No.

22 MR. LEMKE: None, Your Honor.

23 THE COURT: My wife's a teacher too. I
24 understand. Good luck.

25 THE COURT: Anyone else in the front row?

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1 How about the second row?

2 Ma'am, did you have your hand raised, Miss Yacoub?

3 A PROSPECTIVE JUROR: Yes. I have a business
4 and the first three days of the week is the worse days
5 for me. I cannot leave.

6 THE COURT: You feel because of that you
7 wouldn't be able to sit here and be fair and impartial?

8 A PROSPECTIVE JUROR: Exactly.

9 THE COURT: Any objection, counsel.

10 MR. HAYDEN: No.

11 MR. LEMKE: None, Your Honor.

12 THE COURT: Bear in mind that all this does is
13 get you to where the attorneys will talk to you.
14 Because you're sitting here doesn't mean you will be on
15 the jury.

16 THE COURT: Good luck. Did you have your hand
17 raised.

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: You have a problem with the time
20 element?

21 A PROSPECTIVE JUROR: I have internship,
22 summer classes.

23 THE COURT: Okay. Any objection?

24 Miss Hirsh?

25 A PROSPECTIVE JUROR: I can't provide child

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1 care for my kids that long a time. Thought a couple
2 days but I can't do it that long.

3 THE COURT: Any objection.

4 MR. HAYDEN: None.

5 MR. LEMKE: No.

6 THE COURT: Step down. Let the commissioner
7 know too.

8 A PROSPECTIVE JUROR: I thought a couple of
9 days I could do it but I can't do that long. Thanks.

10 THE COURT: Anybody else just with the time
11 element, or with the ability to follow the law as I give
12 it to you? No problem with that.

13 I will just ask you a couple of questions to enable
14 the attorneys to get through the paperwork so they can
15 be prepared when they get up to talk to you.

16 Maybe we should fill the box. Let's fill the
17 seats. Give me one minute. We will fill the seats.

18 THE CLERK: Jonathan Punzone, P-U-N-Z-O-N-E.

19 No answer.

20 Refer that to the commissioner of jurors,
21 Judge.

22 Kenneth Wall. Seat number five.

23 Seat number six Jill Damato, D-A-M-A-T-O. Seat
24 number six.

25 Number seven, Rosemarie Sparrow, S-P-A-R-R-O-W.

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1 Number seven.

2 Lori Dworkin, D-W-O-R-K-I-N, number ten.

3 Jessica Sakhaee, S-A-K-H-A-E-E, number eleven.

4 And seat number twelve, Norman Basner,

5 B-A-S-N-E-R.

6 THE COURT OFFICER: Got two more.

7 THE COURT: With respect to the people who
8 just took a seat, any problem with respect to the time
9 element?

10 Yes, ma'am.

11 A PROSPECTIVE JUROR: I am a reading teacher.
12 I have a lot of things to wrap up for the end of the
13 year, testing and --

14 THE COURT: Right.

15 A PROSPECTIVE JUROR: Thank you.

16 THE COURT: You have the same problem as the
17 other young lady had.

18 Any objection?

19 MR. HAYDEN: No.

20 MR. LEMKE: None.

21 THE COURT: You're Miss Sparrow.

22 Yes, ma'am.

23 A PROSPECTIVE JUROR: Same thing. I am a
24 teacher.

25 THE COURT: Okay. Your name.

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1 A PROSPECTIVE JUROR: Damato.

2 THE COURT: Any objection?

3 MR. HAYDEN: No.

4 MR. LEMKE: No.

5 THE COURT: Thank you.

6 Sir, did you have your hand up.

7 A PROSPECTIVE JUROR: Yes. I travel a lot on
8 my job. On the thirteenth I am out of the city.

9 THE COURT: With all that going on you
10 wouldn't be able to be fair and impartial.

11 A PROSPECTIVE JUROR: I would be out all that
12 week.

13 THE COURT: You're out. I am sorry. Didn't
14 hear you.

15 Any objection?

16 MR. HAYDEN: No.

17 MR. LEMKE: No.

18 THE COURT: That is Mr. Wall.

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: In the back row.

21 Your name, sir.

22 A PROSPECTIVE JUROR: Basner. I have a
23 medical procedure scheduled for next week.

24 THE COURT: Consent?

25 MR. HAYDEN: Yes.

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1 MR. LEMKE: Yes.

2 THE COURT: You can step down. Good luck.

3 THE COURT: And, yes, ma'am.

4 A PROSPECTIVE JUROR: I have a medical
5 problem. I am going for testing now.

6 THE COURT: Okay. No problem. On consent.

7 MR. HAYDEN: Yes.

8 MR. LEMKE: Yes.

9 THE COURT: You can step down.

10 THE CLERK: Ralph Esposito, E-S-P-O-S-I-T-O.
11 Seat number five.

12 Patarawan Charoenray, C-H-A-R-O-E-N-R-A-Y.

13 THE COURT: Sir, ma'am, anything so far?

14 A PROSPECTIVE JUROR: Yes. Two weeks is too
15 long for me for my company because we only have four
16 person for each department.

17 THE COURT: Okay.

18 THE COURT: Any objection.

19 MR. HAYDEN: No.

20 MR. LEMKE: None, Your Honor.

21 THE COURT: Okay, ma'am. Thank you.

22 I will just do a couple of questions so the
23 attorneys can hear and then they'll come up and talk to
24 you.

25 In the front row, anybody have any relative or

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1 close friend or anyone you know in law enforcement?

2 A PROSPECTIVE JUROR: I am, yes, sir. I am a
3 detective NYPD.

4 THE COURT: Okay.

5 A PROSPECTIVE JUROR: Been a cop for eighteen
6 years. Work for narcotics now. Been a detective for
7 six.

8 THE COURT: And, you heard obviously there's
9 going to be a lot of police officers here from Nassau
10 County.

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: But you also heard the admonitions
13 that I have given and the attorneys have spoken about
14 with respect to judging credibility of witnesses. No
15 greater, no lesser. Will you be able to keep an open
16 mind, be fair and impartial in this regard?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: Yes, sir.

19 A PROSPECTIVE JUROR: I have a close friend
20 who is a judge.

21 THE COURT: Okay. Here in this county.

22 A PROSPECTIVE JUROR: Court of Appeals.

23 THE COURT: Tell him I'm doing a good job.

24 Will that relationship in any way affect you
25 from being fair and impartial in this case?

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1 A PROSPECTIVE JUROR: No.

2 THE COURT: Thank you. In the back row,
3 anyone, family member or close friend or anything in law
4 enforcement.

5 A PROSPECTIVE JUROR: Yes. My mom was a
6 secretary for the clerk's office here in Mineola. She's
7 retired now. And then I have a pretty big family. So,
8 two of my uncles are retired New York City Police
9 Officers. I have a cousin who is a Port Authority
10 Police Officer. And I have another cousin who is in the
11 academy for Suffolk County.

12 THE COURT: Great. You heard everything we
13 have discussed with respect to there will be police
14 officers in this case and also but notwithstanding the
15 fact they're police officers, they get no greater or
16 lesser credibility in your mind, and you will be able to
17 uphold that standard?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Use your everyday life experiences
20 and you decide is this guy telling me straight or is he
21 not. You know.

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: I am sure they'll probe that some
24 more with you.

25 Anyone else in the back row, law enforcement.

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1 A PROSPECTIVE JUROR: I have a cousin that is
2 a lawyer.

3 THE COURT: Okay. Does he do criminal.

4 A PROSPECTIVE JUROR: No, he in Florida,
5 though.

6 THE COURT: Okay. Does criminal in Florida.
7 Do you have the opportunity to discuss cases with your
8 cousin?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: Would that relationship in any way
11 affect you from being fair and impartial here?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: Then I will ask one more
14 question. In the front row, anyone ever been a victim
15 of a crime, accused of a crime, a witness to a crime,
16 other than, of course, the officer. I know you have
17 been involved in a lot of cases, right? But if you have
18 something else to tell me, you tell me.

19 A PROSPECTIVE JUROR: Personally, you know,
20 car was stolen, cars, you know, in Queens. My car was
21 stolen out here. Car was broken into twice. I had a
22 cousin that was collared. I have an uncle that was
23 locked up.

24 THE COURT: You basically have a whole
25 spectrum.

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1 A PROSPECTIVE JUROR: The whole gambit.

2 THE COURT: Not involved in the criminal
3 justice system but different people affected in
4 different ways by it.

5 A PROSPECTIVE JUROR: Right.

6 THE COURT: Any of those experiences affect
7 you from being fair and impartial in listening to the
8 evidence in this case and judging everything based on
9 what you hear and see in this case?

10 A PROSPECTIVE JUROR: Not at all.

11 THE COURT: Sir, right here, you have your
12 hand raised.

13 A PROSPECTIVE JUROR: Home was burglarized, I
14 had a car stolen.

15 THE COURT: Okay. And did the police get
16 involved in any of those things.

17 A PROSPECTIVE JUROR: Yes, they did.

18 THE COURT: Any experience either pro or con
19 with the way it was investigated that would affect your
20 ability to be fair and impartial?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: And, you understand those events
23 have nothing to do with this case.

24 A PROSPECTIVE JUROR: Yes.

25 THE COURT: You will be able to judge this

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1 case on what you see and hear in this courtroom?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: Someone else have their hand
4 raised? Yes, sir.

5 A PROSPECTIVE JUROR: Car was vandalized two
6 years ago.

7 THE COURT: And, same question to you, did the
8 police get involved in that situation?

9 A PROSPECTIVE JUROR: Actually, someone
10 driving by found out who it was, and we found out and
11 the police did get involved later on, but there was no
12 investigation or anything.

13 THE COURT: But that experience, the event
14 that occurred, and the police's involvement, did that
15 leave any taste in your mind, either pro or con that
16 would affect you for being fair and impartial in this
17 case and judging the credibility of the witnesses as you
18 see and hear them in this courtroom?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Okay. Yes, sir.

21 A PROSPECTIVE JUROR: Car stolen, break-ins,
22 house.

23 THE COURT: Okay. You heard the questions I
24 posed to your fellow potential jurors. Any of those
25 events that have taken place in your mind would affect

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1 you from being fair and impartial in this particular
2 case?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: How about in the back row, folks?

5 A PROSPECTIVE JUROR: Pocketbook stolen, car
6 was stolen.

7 THE COURT: When did that happen, recently
8 or --

9 A PROSPECTIVE JUROR: Last three years.

10 THE COURT: Anything about those events which
11 occurred in your life that you think would affect you
12 from being fair and impartial? What I mean, I mean, not
13 only that the crime occurred, but also any experience
14 you might have had with law enforcement personnel.
15 Anything in those experiences that would affect you from
16 being fair to both sides sitting here today?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: No. Okay.

19 Someone else have their hand raised.

20 A PROSPECTIVE JUROR: I had a car stolen.
21 Everything was taken care of, cops were involved. All
22 was taken care of.

23 THE COURT: Because of that experience, you
24 will give no greater or lesser credibility to police
25 witnesses. You will listen to the testimony as it comes

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1 out. You will judge it based on your everyday life
2 experience.

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. Yes, sir.

5 A PROSPECTIVE JUROR: A long time ago I was
6 assaulted by one person that was with a group of four or
7 five individuals. Just wrong place, wrong time. Also I
8 had a car stolen.

9 THE COURT: Do you think either the events
10 themselves or perhaps any contact you had with police
11 personnel because of those events would any of those
12 affect you being fair and impartial to both the People
13 and the defendant in this case?

14 A PROSPECTIVE JUROR: No. Only thing that was
15 disconcerting about the car being stole, it was right
16 around the block from a police station.

17 THE COURT: It happens.

18 A PROSPECTIVE JUROR: It wouldn't have an
19 impact.

20 THE COURT: Great. I am sure the attorneys
21 will probe that some more. I appreciate everybody being
22 forth right. Again, if something gets jogged in your
23 memory and you want to discuss it and you don't want to
24 talk openly, come up here. Okay.

25 Mr. Hayden.

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1 (Whereupon, Mr. Hayden questioned the prospective
2 jurors, herein not recorded.)

3 (Whereupon, Mr. Lemke questioned the prospective
4 jurors, herein not recorded.).

5 (Whereupon, the following takes place at
6 side-bar.)

7 THE COURT: Number one has been let go on
8 consent. And, with respect to number thirteen, Miss
9 Williams, based on her different responses both to Mr.
10 Hayden and Mr. Lemke, if the two of you would like, I
11 would allow her to be removed on consent for cause.

12 MR. LEMKE: Yes.

13 THE COURT: Any objection to that?

14 MR. HAYDEN: No.

15 MR. LEMKE: No objection.

16 THE COURT: No objection. On consent for
17 cause.

18 We an start the process.

19 THE CLERK: Consideration first five jurors up
20 to and including Delaney. Challenges for cause, People.

21 MR. HAYDEN: No, none for cause.

22 MR. LEMKE: No.

23 THE CLERK: Peremptory challenges, People.
24 You've used ten.

25 THE COURT: Two and five.

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1 THE COURT: Mr. Lemke.

2 MR. LEMKE: Four and five.

3 THE COURT: Defendant has exercised
4 peremptories on Mary Marino and Anthony Lomangino. That
5 leaves Mr. Delaney as juror number eight.

6 Is that correct?

7 MR. LEMKE: Yes.

8 THE CLERK: Consideration of the last four
9 empty seats, challenge for cause, People.

10 MR. HAYDEN: No, Your Honor.

11 THE CLERK: Defendant.

12 MR. LEMKE: None.

13 THE CLERK: Peremptory, People.

14 MR. HAYDEN: Eleven and fourteen.

15 THE CLERK: Peremptory, defendant.

16 MR. LEMKE: Nine.

17 THE COURT: We have one.

18 MR. LEMKE: Yes.

19 (Whereupon, the following takes place in open
20 court.)

21 THE COURT: Folks, again, I want to thank you
22 for your time, patience and consideration. I thank you
23 not only on behalf of the court but also on behalf of
24 the People and the defendant.

25 Again, if you'd listen to Mr. Paoli, one person was

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1 chosen from this group to remain as a juror and the rest
2 of you will just follow the officer's instructions and I
3 hope you have a great day.

4 THE CLERK: The following juror whose name I
5 am about to call has been selected. If you hear your
6 name, stay in your seat. The other jurors are excused
7 with the thanks of the court.

8 Mr. Christopher Delaney remain in your seat. Other
9 jurors are excused.

10 Mr. Delaney, please stand, raise your right
11 hand.

12 Do you swear or affirm that you will try this
13 action in a just and impartial manner to the best of
14 your ability and render a verdict according to the law
15 and evidence so help you God, sir?

16 A PROSPECTIVE JUROR: Yes.

17 THE CLERK: Please have a seat.

18 THE COURT: Mr. Delaney, as I told the other
19 sworn jurors yesterday, I am going to give you
20 admonitions for you to follow. You're free for the day,
21 to return tomorrow, Friday, at nine o'clock. I would
22 suggest to you, as I did the others, you might want to
23 come early. Sometimes parking is tough. There's
24 Dunkin Donuts, Starbucks across the street.

25 You must not converse among yourselves or with

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1 anyone else upon any subject connected with the trial.
2 You must not read or listen to any accounts or
3 discussions of the case in the event it is reported by
4 newspapers or media. You must not visit or view the
5 promises or place where the offense charged was
6 allegedly committed or any other premises or place
7 involved in the case.

8 Prior to your being discharged, you must not
9 request, accept, agree to accept, or discuss with any
10 person the receiving or accepting of any payment or
11 benefit in consideration for supplying any information
12 concerning the trial.

13 You must promptly report to the Court any incident
14 within your knowledge involving an attempt by any person
15 improperly to influence any member of the jury.

16 You are not to access the Internet or Worldwide Web
17 any means available to you for the purposes of either
18 learning about this case or the law or legal issues
19 concerning this case.

20 As you heard me say, I'm not saying you can't go on
21 the computer, just not to look up this case or any other
22 law involving this case.

23 Okay. Thank you. Have a great day. See you
24 tomorrow morning.

25 A PROSPECTIVE JUROR: Do I get anything? I

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1 have to report to work. I wasn't sure if there was
2 something I would get.

3 THE COURT: The sergeant will take care of
4 that.

5 (Whereupon, there was a recess in the proceedings.)

6 THE CLERK: Case on trial, indictment
7 167N-2005, the People of the State of New York versus
8 Mark Orlando.

9 Appearances for the People.

10 MR. HAYDEN: Robert T. Hayden, Your Honor.
11 The People are ready.

12 THE CLERK: Representing Mr. Orlando.

13 MR. LEMKE: Dennis Lemke for Mr. Orlando.
14 We're ready also.

15 THE CLERK: Let the record reflect the
16 presence of Mr. Orlando and the prospective jurors.

17 THE COURT: Good afternoon, ladies and
18 gentlemen. My name is Judge David Sullivan. I know it
19 says LaPera on the door and name plate. I am just
20 borrowing his courtroom to do the jury selection.

21 Also, I note it's 12:30. It's lunch time. I am
22 going to go less than ten minutes, and then what will
23 happen, we will break to about 2:15, 2:30, because I
24 have some other matters I have to attend to. Okay.

25 Our intention here is to pick a fair and impartial

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1 jury, and in no way, either the Court or the respective
2 attorneys in front of me are trying to embarrass you or
3 pry into your personal life or anything like that. And
4 you will see as the process goes on, that if there's
5 anything you want to discuss that is of a personal
6 nature, you can come up to the bench, you let us know
7 and we will talk to you privately.

8 Okay. So, I am just going to give some preliminary
9 instructions. Mr. Paoli is going to swear you in and
10 then I am going to give you some preliminary
11 instructions for a few minutes and then we will resume
12 this afternoon. Okay.

13 THE CLERK: Prospective jurors please rise and
14 raise your right hand.

15 Do you and each of you solemnly swear to answer
16 truthfully all questions asked of you relative to your
17 qualifications to serve as trial juror in this action so
18 help you God?

19 Please respond I do.

20 (Whereupon, the prospective jury panel collectively
21 answered in the affirmative.)

22 THE CLERK: Have a seat, please.

23 THE COURT: Again, welcome everyone. Some of
24 you here are about to be selected as jurors. I will
25 explain briefly what the trial involves and the roles of

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1 the judge and the jury. We will also determine which of
2 you will actually sit as jurors in this case.

3 The trial which is about to commence is a criminal
4 action entitled the People of the State of New York
5 against Mark Orlando who is called the defendant. The
6 indictment reads as follows, in sum and substance.

7 The Grand Jury of the County of Nassau by this
8 indictment accuses the defendant Mark Orlando with the
9 crime of Murder in the Second Degree in violation of
10 Section 125.25(1) of the Penal Law of the State of New
11 York committed as follows:

12 The defendant Mark Orlando, on or about the third
13 day of December, 2004, in the County of Nassau, State of
14 New York, individually and aiding and abetting, and
15 being aided and abetted by Herva Jeannot, with intent to
16 cause the death of Robert Calabrese, caused the death of
17 Robert Calabrese.

18 A trial is the process which determines if the
19 defendant is guilty or not guilty of the charge I just
20 read. In that process those of you who are selected as
21 jurors and I as judge perform separate functions. As
22 jurors you are going to be called upon to determine
23 whether or not the evidence which you hear and see in
24 this case establishes the defendant's guilt beyond a
25 reasonable doubt.

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1 In order to do that, at the end of the trial, you
2 will have to evaluate all the evidence and determine
3 what evidence that you have heard from the witnesses and
4 seen as exhibits is credible and what it all means.
5 This is called finding the facts. That would be your
6 function alone. I will find no facts in this trial.
7 Your ultimate decision is called a verdict. Your
8 verdict will be either guilty or not guilty.

9 The attorneys will present the evidence usually by
10 calling witnesses and may suggest in their closing
11 arguments that you draw certain conclusions from the
12 evidence. You're not bound by what the attorneys say.
13 Only you can decide what really happened and a verdict
14 as to the count in the indictment. As judge I make no
15 determination of guilt or lack of guilt. My role at
16 trial is to ensure that you reach your verdict in
17 accordance with the applicable law as I will explain it
18 to you.

19 In order for the People and the defendant to
20 receive a fair trial, I may have to rule on questions
21 concerning the conduct of the trial. Those rulings have
22 nothing do with whether the defendant is guilty or not
23 guilty. I may also rule on questions concerning what
24 evidence you may consider, and for what purpose.

25 When I make a ruling concerning whether you may

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1 hear some testimony or see some exhibit which is offered
2 as evidence, I will be ruling on whether or not you are
3 permitted to hear or see it as a matter of law.

4 Likewise, if I instruct you to disregard something you
5 might have heard I will do so because that is the law.

6 None of my rulings should be taken by you as any
7 indication at all of whether you should believe all or
8 part of what is offered as evidence, or that the
9 defendant is guilty or not guilty. That is solely for
10 you to determine.

11 You must accept the law as I give it to you if the
12 defendant and the People are to have the fair trial to
13 which they are entitled.

14 The People are represented by Denis Dillon,
15 District Attorney of Nassau County. Assistant District
16 Attorney Robert Hayden will be trying the case on his
17 behalf.

18 MR. HAYDEN: Good afternoon, everyone.

19 THE COURT: The defendant is represented by
20 his attorney, Mr. Dennis Lemke.

21 MR. LEMKE: Good afternoon.

22 THE COURT: The fact that this action is
23 brought in the name of the People, or that evidence is
24 presented by a public official, does not in any way
25 indicate that the public wants a specific verdict. The

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1 People of the State of New York are served by whatever
2 verdict is justified by the evidence.

3 You have heard reference to the fact that the
4 defendant was indicted by a Grand Jury. This too is not
5 and must not be taken as any evidence of guilt. An
6 indictment is simply a piece of paper by which a
7 defendant is accused of a crime. Remember the defendant
8 is presumed innocent. Only you as members of the trial
9 jury will determine whether the defendant is guilty or
10 not guilty.

11 Serving on a jury is a vital function for citizens
12 under our system of law. It is also a very great
13 responsibility. To accord the defendant and the People
14 a fair trial you must as a juror be free from any
15 preconceived notions, sympathies or prejudices that
16 might prevent you from returning a fair and just verdict
17 based solely on the evidence or lack of evidence.

18 Thus, the first order of business will be to talk
19 to you as prospective jurors. I will ask you some
20 questions and after I finish, the attorneys for both
21 parties will ask some questions.

22 Again, as I stated, when you first entered the
23 courtroom, the purpose of these questions is not to
24 embarrass you or to discover any personal details about
25 your lives. It is simply to determine who will

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1 ultimately sit as jurors in this case.

2 A number of you will not be selected, but this is
3 not a reflection on you either as a citizen or as a
4 person. It is simply a decision reached during the
5 selection process that you are not to sit on this
6 particular case.

7 Mr. Paoli, at this point, I think we will -- want
8 to fill the box or break for lunch?

9 Folks, being it's twenty to one I am going to break
10 for lunch. I appreciate the fact you're all here doing
11 your civic duty. One thing I can assure all of you is
12 that you will be treated with utmost respect by this
13 Court.

14 I am going to break and resume here at
15 approximately 2:20. You will listen to the officers and
16 Mr. Paoli, my clerk.

17 I hope you have a good lunch.

18 L U N C H E O N R E C E S S

19 (Afternoon session.)

20 THE CLERK: Continued case on trial,
21 indictment 167N-2005, People versus March Orlando.

22 People ready.

23 MR. HAYDEN: Ready, Your Honor.

24 THE CLERK: Defense ready?

25 MR. LEMKE: Defendant ready, Your Honor.

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1 THE CLERK: Let the record reflect the
2 presence of Mr. Orlando and the prospective jurors.

3 THE COURT: Good afternoon, ladies and
4 gentlemen. I apologize for the delay.

5 What we're going to do, I am going to tell you
6 briefly the length of the trial, I am going to have --
7 Mr. Paoli is going to randomly pick fourteen names out
8 and when he does you will walk up to the sergeant here
9 and the officer with your forms, and then you will go
10 into the seats here.

11 I don't want you to be intimidated or afraid to go
12 into the seats. That doesn't necessarily mean you will
13 be chosen for this jury. All it means is we will be
14 talking directly to the fourteen people that are sitting
15 there, but we would ask, of course, everyone to listen
16 because you may end up sitting there as well. And it
17 will be the same questions posed to you.

18 I am going to tell you a couple of brief things
19 right now to try to expedite it so if there's a problem
20 off the bat before you get into the seat I will let you
21 go. Because as I said I am not trying to in any way
22 force or compel you to sit here and inconvenience you.
23 The only thing I can tell you, however, is being
24 released from this courtroom just sends you back to the
25 commissioner of jurors.

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1 Okay. I don't know how long you have been here. I
2 don't know when the period ends, when you can be
3 relieved of the jury duty here. When I give you this
4 preliminary information you will know, you will know
5 what the case is about already. You will know the
6 charge. The case will take approximately two weeks.
7 We're saying two weeks from this Monday. And I think
8 that is an outer limit. I believe we're going to move
9 quickly, definitely get to deliberations prior to that
10 time. Just so you know, if you're chosen to sit on this
11 jury, we intend to start the trial and the testimonial
12 phase of the trial tomorrow. We will not sit on
13 Monday. So, you have had Monday off.

14 The reason I am telling you these things up front,
15 if you have family or a business situation that
16 prohibits you from sitting for these two weeks, if you
17 are called in this random fourteen names, that will be
18 called in a moment, as you get up here to the sergeant,
19 just put your hand up and I will talk to you right here
20 instead of having you sit, and then going through having
21 to get up and fill the seat again.

22 Bear in mind it's something that, service is
23 something that is obviously pivotal to our system. I
24 ask you don't make up excuses not to sit if you don't
25 have a family, personal or business situation, and you

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1 are able to sit, I ask that you fulfill your obligation
2 to the system and to our country. That is all that
3 would mean.

4 I will ask you some general questions. I reiterate
5 if it's something personal you want to tell us, just let
6 us know and you will come up here because we're not
7 trying to embarrass you. And then after I ask you some
8 general questions, each of the attorneys are going to
9 talk to you and ask you some questions. That is what it
10 means to get up to these seats. I am trying to
11 eliminate the fear of the unknown if any of you have
12 never been through this process before.

13 Of course, if you get called by Mr. Paoli for a
14 minute, if you have a medical situation, or you have a
15 hearing impairment or something, you know, that will
16 affect your ability to sit on this case and be fair and
17 impartial, you let us know when you get up here. Okay.
18 Thank you.

19 THE CLERK: Ladies and gentlemen, I am going
20 to draw fourteen names randomly from the drum here. If
21 you hear your name called, use the swinging gate over
22 here on my left, probably your right, use this swinging
23 gate to approach the podium. Bring your items with you,
24 coat, pocketbook, jacket, anything like that, bring your
25 personal possessions with you. Okay. Have all your

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1 questionnaire broken down into the four parts, please,
2 so we don't have to separate them.

3 Prospective juror Michael Camastro,
4 C-A-M-A-S-T-R-O.

5 THE COURT: Pick the names from the last row
6 first.

7 THE CLERK: Jennifer Eishstadt
8 E-I-S-H-S-T-A-D-T.

9 Lauren Jacob, J-A-C-O-B, seat number three.
10 Seat number four Lana Marascro, M-A-R-A-S-C-R-O.
11 Number five --

12 THE COURT: Bear in mind if there's a problem
13 with the two weeks or family or business situation, let
14 me know here because I am going to assume once you sit
15 there I can go further into my questioning.

16 Am I clear?

17 (Whereupon, the following takes place at a
18 side-bar.)

19 THE CLERK: This is Miss Marascro.

20 THE COURT: Good afternoon.

21 A PROSPECTIVE JUROR: I have a husband who is
22 in a federal prison.

23 THE COURT: We don't want to upset you.

24 MR. HAYDEN: Consent.

25 MR. LEMKE: Consent.

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1 A PROSPECTIVE JUROR: Husband's very sick.

2 See you getting emotional already. You feel
3 you can't sit on this case.

4 A PROSPECTIVE JUROR: Right.

5 MR. HAYDEN: Consent.

6 MR. LEMKE: Consent.

7 THE COURT: We don't want to upset you. Just
8 follow the officer's instructions.

9 THE COURT: You guys all right at this point?

10 (Whereupon, the following takes place in open
11 court.)

12 THE CLERK: Seat number three, David Byrnes,
13 B-Y-R-N-E-S.

14 THE COURT: Something private?

15 A PROSPECTIVE JUROR: Like to approach

16 (Whereupon, the following takes place at side-bar.)

17 A PROSPECTIVE JUROR: I am a private
18 physician, gastroenterologist.

19 THE COURT: Sitting on this case would affect
20 your ability to be fair and impartial?

21 Any objection?

22 MR. HAYDEN: No.

23 MR. LEMKE: No.

24 (Whereupon, the following takes place in open
25 court.)

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1 THE CLERK: James Braja, B-R-A-J-A.

2 THE COURT: If you do have a problem with two
3 weeks, it's not something of a personal nature, you can
4 tell us from the podium. Okay. Otherwise, I am having
5 the attorneys stand up here so we don't have to keep
6 getting up.

7 You have a problem?

8 A PROSPECTIVE JUROR: Sort of personal.

9 (Whereupon, the following takes place at side-bar.)

10 A PROSPECTIVE JUROR: Mention it's starting
11 next week, runs two weeks.

12 THE COURT: Yes. Start tomorrow. Wouldn't
13 sit Monday. Then it would go for two weeks, and you're
14 sitting here doesn't mean you're --

15 A PROSPECTIVE JUROR: I understand. Next week
16 I have two children to take care of. My wife is going
17 on a business trip the second week of the thirteenth,
18 fourteenth, fifteenth. I am the sole provider of my two
19 kids for those three days.

20 THE COURT: Thirteenth, fourteenth and
21 fifteenth.

22 MR. LEMKE: Consent.

23 MR. HAYDEN: Consent.

24 THE COURT: Folks, I know this is your first
25 experience, we're here all the time so it becomes second

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1 nature. When I am talking something personal,
2 embarrassing, you know, it's something intimate, you
3 know. If you cant stay next week due to a child care
4 situation, something like that, you can tell us that
5 from the podium. Speed things up.

6 Again, bear in mind, I am not the type of judge who
7 tries to compel you to sit here and go through this
8 process. I try to cooperate with you. When you leave
9 here I don't know where you're going to end up. Bear
10 that in mind. And if things aren't significant in the
11 next two weeks, see if you can sit through the process,
12 and that means I will ask you some questions, the
13 attorneys will ask you some questions. Doesn't mean you
14 will e on this case. Appreciate it.

15 THE CLERK: Thomas Donovan, D-O-N-O-V-A-N.

16 Carl Lieberman, L-I-E-B-E-R-M-A-N.

17 A PROSPECTIVE JUROR: Two things. My father
18 was murdered.

19 THE COURT: That is enough I think. Sorry to
20 hear that.

21 On consent?

22 MR. HAYDEN: Yes.

23 MR. LEMKE: Yes.

24 THE CLERK: Robin Charlow, C-H-A-R-L-O-W.

25 Jeffrey Tuck, T-U-C-K.

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1 Shelly Bustric, B-U-S-T-R-I-C.

2 THE COURT: Public, private?

3 A PROSPECTIVE JUROR: Single mother of two
4 children. I can't stay two weeks.

5 THE COURT: Consent?

6 MR. HAYDEN: Consent.

7 MR. LEMKE: Consent.

8 THE CLERK: Dominic Vissichelli,
9 V-I-S-S-I-C-H-E-L-L-I.

10 Robert Herrera, H-E-R-R-E-R-A.

11 David Evans, E-V-A-N-S.

12 A PROSPECTIVE JUROR: Like to speak to the
13 judge.

14 I have a working situation. I am a school
15 teacher. Ten days left end of school and finals.

16 THE COURT: My wife's a teacher. Consent?

17 MR. HAYDEN: Consent.

18 MR. LEMKE: Consent.

19 THE CLERK: Joan Catanese, C-A-T-A-N-E-S-E.

20 A PROSPECTIVE JUROR: This is my second day.
21 I woke up with bloodshot eyes. Called the doctor during
22 lunch. I should get it looked at.

23 THE COURT: Consent.

24 MR. HAYDEN: Yes.

25 THE CLERK: Thomas Donegan, D-O-N-E-G-A-N,

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1 number eight.

2 Diane Haley, H-A-L-E-Y.

3 David Moore, Jr. M-O-O-R-E, seat number ten.

4 Christopher Lake, L-A-K-E.

5 THE COURT: Yes, sir.

6 A PROSPECTIVE JUROR: I am the sole proprietor
7 of a service business. It would be hardship to be away
8 two weeks.

9 THE COURT: Consent.

10 MR. HAYDEN: Yes.

11 MR. LEMKE: Yes.

12 THE CLERK: Melissa Bates, B-A-T-E-S, seat
13 number eleven.

14 A PROSPECTIVE JUROR: I can't afford to take
15 two weeks off from work. I can't afford it. Supporting
16 myself.

17 MR. HAYDEN: Consent.

18 MR. LEMKE: Consent.

19 THE COURT: Excused. Take care.

20 THE CLERK: Thomas Cannon, C-A-N-N-O-N.

21 A PROSPECTIVE JUROR: I have court tomorrow.

22 THE COURT: Okay: Consent, gentlemen?

23 MR. LEMKE: Yes.

24 MR. LEMKE: Yes.

25 THE COURT: Good luck.

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1 THE CLERK: Steven Kolasinski,
2 K-O-L-A-S-I-N-S-K-I.

3 A PROSPECTIVE JUROR: I have two job
4 interviews set up next week.

5 THE COURT: Sure. No problem.

6 MR. HAYDEN: Consent.

7 MR. LEMKE: Consent.

8 THE CLERK: John Schoenberg,
9 S-C-H-O-E-N-B-E-R-G.

10 A PROSPECTIVE JUROR: I am a teacher and next
11 week is the last week.

12 THE COURT: We run into that problem a lot.
13 On consent. Good luck.

14 MR. HAYDEN: Yes.

15 MR. LEMKE: Yes.

16 THE CLERK: . Howard Kaufman, K-A-U-F-M-A-N.

17 A PROSPECTIVE JUROR: I have a concern with
18 the possible two week term of the trial. Never spent
19 more than a week outside of my office at one time. Only
20 one staff person working with me. Only been with me a
21 month. I'd like to be excuse.

22 THE COURT: Gentlemen.

23 MR. HAYDEN: Consent.

24 MR. LEMKE: Consent.

25 THE CLERK: Christian Merjuia, M-E-R-J-U-I-A..

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1 Maria Muniz, M-U-N-I-Z.

2 THE COURT OFFICER: Personal nature. This
3 juror would like to step up.

4 (Whereupon, the following takes place at
5 side-bar.)

6 THE COURT: Hello.

7 A PROSPECTIVE JUROR: Before I try but I have
8 problem with language.

9 THE COURT: I see that. No problem. Because
10 of the language difficulty you might not hear
11 everything. It would be important as a juror to hear.

12 On consent?

13 MR. HAYDEN: Yes.

14 MR. LEMKE: Yes.

15 A PROSPECTIVE JUROR: Thank you.

16 (Whereupon, the following takes place in open
17 court.)

18 THE CLERK: Rocco Napol.

19 THE CLERK: I got like a work conference but I
20 can get somebody to sub for me.

21 THE COURT: Want to go through the questions
22 and if it starts bothering you, just tell us.

23 THE CLERK: Christopher Schaff, S-C-H-A-F-F.

24 A PROSPECTIVE JUROR: I work for a small
25 publishing company in Merrick. I do all the invoicing,

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1 shipping, receiving. I would, I think it would be a
2 hardship for the company.

3 THE COURT: Consent?

4 MR. HAYDEN: Yes, Your Honor.

5 MR. LEMKE: Consent.

6 THE CLERK: Kristin Lopoff, L-O-P-O-F-F.

7 A PROSPECTIVE JUROR: I need to be at work. I
8 am sorry.

9 THE COURT: That is no problem. You can
10 leave. You have to go back to the commissioner.

11 THE CLERK: Katelyn Leo, L-E-O, seat number
12 thirteen.

13 A PROSPECTIVE JUROR: I have two jobs. Going
14 to be pretty much impossible for me to find coverage.

15 THE COURT: Okay. Be a problem for you to sit
16 fair and impartially because of that.

17 A PROSPECTIVE JUROR: I would not be able to
18 find anyone to work.

19 THE COURT: Gentlemen.

20 MR. HAYDEN: Consent.

21 MR. LEMKE: Consent.

22 THE CLERK: Carol Schulman, S-C-H-U-L-M-A-N.

23 A PROSPECTIVE JUROR: I am teacher, same.

24 THE COURT: Same problem.

25 A PROSPECTIVE JUROR: Last week of June.

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1 THE COURT: Any objection?

2 MR. HAYDEN: No.

3 MR. LEMKE: No.

4 THE CLERK: Egilla Phelps, P-H-E-L-P-S.

5 Matthew Morissi, M-O-R-I-S-S-I. Seat number
6 fourteen.

7 Quinlyn Clemenz, C-L-E-M-E-N-Z.

8 A PROSPECTIVE JUROR: Retire because I have a
9 memory loss. Problem concentrating.

10 THE COURT: Let you go.

11 Yes.

12 THE CLERK: Brendan Moynihan, M-O-Y-N-I-H-A-N.

13 A PROSPECTIVE JUROR: I am a CPA and I'm in
14 the middle of an audit. Two weeks would be a hardship.

15 THE COURT: Consent?

16 MR. HAYDEN: Yes.

17 MR. LEMKE: Yes.

18 THE COURT: Ladies and gentlemen in the
19 audience as I indicated we're going to now direct our
20 questions to the ladies and gentlemen in the jury box.
21 However, I just ask you to pay attention. I know it's
22 difficult. It's late in the day. But you may be
23 sitting here. It will be same type of questions. So,
24 you may not know if that opportunity comes right off the
25 bat from something you heard, that this case is not

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1 right for you, we can cut to it and discharge you from
2 this case. Okay.

3 The jury will not be sequestered during its
4 deliberations. You will be permitted to return home in
5 the evening. I will instruct you on the rules you will
6 follow at that time.

7 Has anyone in the last four years serve on any jury
8 duty, either on the state or federal level, in the last
9 four years? No.

10 My first series of questions will concern your
11 background in order to determine if there's anything
12 which might prevent you from deciding this case solely
13 on the evidence presented. I will start by asking them
14 of all of you. Your answers will not necessarily
15 qualify or disqualify you. But an affirmative answer of
16 yes, or even a maybe, will probably mean that either I
17 or the attorneys will ask you more questions
18 individually with respect to that issue.

19 If you wish to answer yes or maybe, please raise
20 your hand as soon as I complete the question. If you do
21 not understand the question, just let me know. If you
22 do not raise your hand, I will assume your answer is no
23 to that question.

24 The defendant, defendant's attorney, and the
25 Assistant District Attorney have already been introduced

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1 to you. Do any of you know either the defendant, his
2 lawyer or the Assistant District Attorney?

3 The following witnesses may be called in this
4 case. They don't have to be, but there's a potential
5 they will be. I am going to read the list. There's
6 many names here. Then I will ask you if you recognize
7 any of the names. Okay.

8 Robert Calabrese, Sr.,, Long Beach.

9 Robert Ianfolla, also Long Beach.

10 Tommy Flores from Long Beach.

11 Barbara Diamant from Long Beach.

12 Detective David Nystrom.

13 Police Officer Peter Vozzo.

14 Ambulance Medical Technician Dan Brooks.

15 Dr. Brian O'Reilly.

16 Dr. Michael DeMartino.

17 Frank Walker from Nassau County.

18 Brian Atkinson, Nassau County.

19 Kathleen Cardineau, Island Park.

20 Charles Costello.

21 Police Officer Steve Loschiavo.

22 Detective Jim McGinn.

23 Detective Bill Brosnan.

24 Detective Jim Cereghino.

25 Detective John McHugh.

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1 Sergeant Greg Magnifico.

2 Police Officer Norman McCloy.

3 Detective Ken Strigaro.

4 Detective Scott Kovar.

5 Detective Michael Nigro.

6 Detective Michael Kuhn.

7 Detective Bob Shaw.

8 Detective Jim DiBeneditto.

9 Ken Carter.

10 Vincent Buscemi, Long Beach Police Department.

11 There may be a representative of Cingular
12 Wireless. I only tell you that in case someone works
13 for that company or knows people that do.

14 Does anybody recognize or believe they know any of
15 the potential witnesses that may testify at this trial?

16 I will start with the front row.

17 Do any of you have any family member or close
18 friend in law enforcement, a police officer, a federal
19 agent, a prosecutor? If so you can raise your hand.

20 In the second row?

21 Yes, sir.

22 A PROSPECTIVE JUROR: My father and uncle are
23 retired New York City Police Officers. My cousin is a
24 sergeant.

25 THE COURT: And, sir, as you can tell, there

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1 will be police officers testifying in this case. I will
2 instruct you on the law that every witness that takes
3 the stand, you are to judge their credibility the same.
4 Because someone is a police officer, they get no greater
5 or lesser credibility.

6 You use your everyday life experiences, and you
7 make a judgment, whether or not you believe the
8 testimony of each and every witness irrespective of
9 their walk of life is something you believe to be
10 credible.

11 Would you be able to do that if you're chosen as a
12 juror in this case?

13 A PROSPECTIVE JUROR: Yes. Sure.

14 THE COURT: Okay. Sir.

15 A PROSPECTIVE JUROR: My cousin is a New York
16 City Police Officer.

17 THE COURT: Okay. You heard what I just said
18 to this gentleman.

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Would you have a problem being
21 able to judge the testimony of police officers the same
22 as any other witness.

23 A PROSPECTIVE JUROR: No.

24 THE COURT: In the back row, someone else have
25 their hand raised.

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1 Yes, sir.

2 A PROSPECTIVE JUROR: Yeah, my father and
3 uncle are retired police officers from the city.

4 THE COURT: Father and uncle?

5 A PROSPECTIVE JUROR: Yeah.

6 THE COURT: And, would that relationship
7 affect you?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: You will be able to follow the law
10 as I instruct you in regard to that?

11 A PROSPECTIVE JUROR: Yes.

12 THE COURT: Okay. Sir, at the end, is that
13 seat fourteen at the end? Seat fourteen. I am sorry,
14 that would be number eight.

15 A PROSPECTIVE JUROR: Close friends, NYPD.

16 THE COURT: Now, you may have occasion to
17 discuss cases with these people, sir. Can you assure us
18 that, A, you would judge every witness's credibility the
19 same? In other words, a police officer gets no greater
20 or no lesser credibility because they're a police
21 officer?

22 You have a problem with that?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Okay. And you understand that
25 they won't be testifying at this case and you will only

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1 judge whatever evidence you hear and see in this case
2 and be fair and impartial?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: Anyone else with law enforcement?

5 Have any of you, again, I will start with the front
6 row. Any of you or anyone in your family ever been the
7 victim of a crime, witnessed a crime, or in any way
8 participated in a criminal proceeding?

9 I will start with you, sir.

10 A PROSPECTIVE JUROR: My mom was robbed, armed
11 robbery.

12 THE COURT: Sorry to hear that.

13 THE COURT: Would that experience affect you
14 from being fair and impartial to both the People and the
15 defendant in this case?

16 A PROSPECTIVE JUROR: No problem.

17 THE COURT: No problem. Okay. You dealt with
18 the police in that case?

19 Were the police involved? Do you have any
20 feelings?

21 A PROSPECTIVE JUROR: I didn't have any.

22 THE COURT: Okay.

23 A PROSPECTIVE JUROR: Not at all.

24 THE COURT: You can be fair and impartial?

25 A PROSPECTIVE JUROR: Yes.

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1 THE COURT: Ma'am.

2 A PROSPECTIVE JUROR: I have been a crime
3 victim.

4 THE COURT: Is it something you can discuss?

5 A PROSPECTIVE JUROR: Rather --

6 THE COURT: Come up privately.

7 (Whereupon, the following takes place at side-bar.)

8 THE COURT: Your name, please.

9 A PROSPECTIVE JUROR: Robin Charlow. I was
10 sexually assaulted.

11 THE COURT: Sorry to hear that. Is that, do
12 you think that experience would affect you from being
13 fair and impartial not just the People, but the
14 defendant as well?

15 Was anyone apprehended?

16 A PROSPECTIVE JUROR: No, it was many years
17 ago.

18 THE COURT: Want to ask questions up here.

19 MR. HAYDEN: You dealt with police officers?

20 A PROSPECTIVE JUROR: Yes.

21 MR. HAYDEN: How do you feel you were
22 treated?

23 A PROSPECTIVE JUROR: Fine.

24 MR. LEMKE: I have nothing.

25 A PROSPECTIVE JUROR: But I have something

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1 else. I teach Hofstra Law School. I teach criminal
2 law. I don't know if that is relevant or not. Never
3 been called to a criminal jury. So --

4 THE COURT: Well, obviously, I am going to
5 charge you on the law. Even if you think I'm giving the
6 wrong law, you will be bound to follow the law as I give
7 it to you.

8 Do you think, because of that experience, your
9 profession, you'd have a problem with that?

10 A PROSPECTIVE JUROR: I don't have a problem.
11 I don't know if you had a problem with me.

12 THE COURT: I will leave it up to the
13 attorneys to question you about that.

14 Do you want to question in regards to that?

15 MR. LEMKE: You teach probable cause, search
16 seizures, arrests.

17 A PROSPECTIVE JUROR: I don't do criminal
18 procedure or substantive criminal law, but I was, I was
19 a federal defender. I'm not a trial attorney. Long
20 time ago.

21 MR. LEMKE: Part of the curriculum elements of
22 different crimes, aiding and abetting, felony murder.

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Consent?

25 MR. HAYDEN: Sure.

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1 MR. LEMKE: Yes. I think so.

2 THE COURT: We're going to let you go.

3 A PROSPECTIVE JUROR: I figured.

4 (Whereupon, the following takes place in open
5 court.)

6 THE CLERK: The following prospective jurors
7 please step up.

8 Hertha Perez, seat number four.

9 THE COURT: Good afternoon.

10 Ma'am, before I continue, anything that you
11 heard so far that would be a problem for you to sit on
12 this case.

13 A PROSPECTIVE JUROR: Well, maybe the last
14 thing you brought up with everything about victims.

15 THE COURT: You have a problem with that.

16 A PROSPECTIVE JUROR: I might. Bunch of
17 things, my family, friends, relatives, my mother.

18 THE COURT: Something you want to talk about
19 or do you want to talk privately about it.

20 A PROSPECTIVE JUROR: Well, it came up once
21 before in an interrogation because, I mean, it was a
22 famous case, you know.

23 THE COURT: Step up. Why don't you step up
24 (Whereupon, the following takes place at side-bar.)

25 A PROSPECTIVE JUROR: I will start with

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1 probably with the Golub case.

2 THE COURT: Your family?

3 A PROSPECTIVE JUROR: I know them. I knew the
4 paper boy.

5 THE COURT: This case may not be right for
6 you.

7 A PROSPECTIVE JUROR: And my mother was
8 threatened with a claw hammer.

9 THE COURT: Any questions?

10 MR. HAYDEN: No.

11 A PROSPECTIVE JUROR: Sister was hit in the
12 head with a gun.

13 THE COURT: Oh my God. We will let you go.

14 MR. LEMKE: Consent.

15 MR. HAYDEN: Consent.

16 (Whereupon, the following takes place in open
17 court.)

18 THE CLERK: Peter Cascino, C-A-S-C-I-N-O.

19 THE COURT: Anything you heard so far, sir,
20 that would affect your ability to be fair and
21 impartial?

22 A PROSPECTIVE JUROR: Repeat that question.
23 Which question were you asking?

24 THE COURT: Well, first of all, the time. Is
25 the time a problem?

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1 A PROSPECTIVE JUROR: No.

2 THE COURT: We talked about if you knew, do
3 you know anyone in law enforcement?

4 A PROSPECTIVE JUROR: Best friend, family, all
5 police officers.

6 THE COURT: There will be a lot of police
7 officers testifying here throughout the course of the
8 trial. If you're chosen, would you be able to judge
9 each one of them individually and not give them any
10 greater or lesser credibility because they're police
11 officers? Or you think you'd have a problem?

12 A PROSPECTIVE JUROR: Honest with you.

13 THE COURT: Sure.

14 A PROSPECTIVE JUROR: My friends are all
15 police officers and detectives and all honest workers
16 and I believe anything they say. We discuss work all
17 the time. So --

18 THE COURT: I am going to let you go.
19 Appreciate your honesty.

20 On consent?

21 MR. HAYDEN: Yes.

22 MR. LEMKE: Yes.

23 A PROSPECTIVE JUROR: Thanks a lot.

24 THE CLERK: Jay Leslie.

25 THE COURT: Time is a problem?

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1 A PROSPECTIVE JUROR: Yes. I am a sole
2 proprietor of a business.

3 THE COURT: You feel you can't be fair and
4 impartial? You'd be worried about the business?

5 A PROSPECTIVE JUROR: Yes.

6 THE COURT: Consent?

7 MR. HAYDEN: Yes.

8 MR. LEMKE: Yes.

9 THE CLERK: Paul Tebesco, T-E-B-E-S-C-O.

10 THE COURT: You have a problem with the time?

11 A PROSPECTIVE JUROR: Yes. I'm a manager of
12 small business. For me to miss two weeks would be a
13 hardship.

14 THE COURT: Consent?

15 MR. HAYDEN: Yes.

16 MR. LEMKE: Consent.

17 THE COURT: Sitting here, if you get through
18 my questioning, it would just enable the attorneys to
19 question you. It doesn't mean you will be sitting on
20 this case.

21 THE CLERK: Roger Savell, S-A-V-E-L-L.

22 A PROSPECTIVE JUROR: I am self-employed. I
23 have individual requirements over the next two weeks.
24 Two weeks are very difficult for me.

25 THE COURT: You can't sit for two weeks?

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1 A PROSPECTIVE JUROR: No way I can sit for two
2 weeks.

3 MR. LEMKE: Consent.

4 MR. HAYDEN: Consent.

5 THE CLERK: Yolando Lorenzotti,
6 L-O-R-E-N-Z-O-T-T-I.

7 THE COURT: Hello, ma'am.

8 A PROSPECTIVE JUROR: Hello.

9 THE COURT: You heard what we have been
10 discussing so far. Any problems at this point?

11 A PROSPECTIVE JUROR: No.

12 THE COURT: Did anyone else in the front row
13 ever been the victim or family member was a victim of a
14 crime or participated in a criminal proceeding?

15 Anyone in the back row?

16 Yes, sir.

17 A PROSPECTIVE JUROR: Father testified at a
18 lot of court proceedings. Wouldn't have a problem with
19 that.

20 THE COURT: Anyone else in the back?

21 Yes, ma'am.

22 A PROSPECTIVE JUROR: I was a victim of a
23 violent crime.

24 THE COURT: Do you want to talk about it from
25 here or do you want to come up here privately?

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1 A PROSPECTIVE JUROR: I guess privately would
2 be better.

3 THE COURT: Sure.

4 (Whereupon, the following takes place at side-bar.)

5 A PROSPECTIVE JUROR: I was raped. I am just
6 concerned about, if the nature of this trial would be
7 graphically violent at all. I am a little concerned
8 about that.

9 THE COURT: Yes. More than likely it would be
10 graphic photographs.

11 A PROSPECTIVE JUROR: I don't know. I just
12 don't know if I can handle that.

13 THE COURT: Sure. Yes, gentlemen, any
14 questions?

15 MR. LEMKE: Consent.

16 MR. HAYDEN: Consent.

17 THE CLERK: Karen Calderone,
18 C-A-L-D-E-R-O-N-E.

19 A PROSPECTIVE JUROR: Time's a problem. I am
20 a self-employed interior decorator. I have contractors,
21 electricians, painters all set up for the next two
22 weeks.

23 MR. LEMKE: Consent.

24 MR. HAYDEN: Consent.

25 THE COURT: Again, I reiterate, that doesn't

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1 mean she will not be back tomorrow and sent somewhere
2 else.

3 Corey Kaliszczjk, K-A-L-I-S-Z-C-Z-J-K, seat number
4 nine.

5 THE COURT: Good afternoon.

6 Anything you heard thus far you have a problem
7 with?

8 A PROSPECTIVE JUROR: No,, sir.

9 THE COURT: Anybody else have their hand
10 raised in the back? Okay.

11 In the front row, any of you ever, not just within
12 the last four years, any time, ever serve on a jury in a
13 criminal or civil case, or on a Grand Jury?

14 Front row. Yes, ma'am.

15 A PROSPECTIVE JUROR: I served on a criminal
16 case.

17 THE COURT: Okay. And, do you understand this
18 is a criminal case, but you have to put that last one
19 out of your mind and apply the law as I give it to you.
20 Will you have any problem doing that.

21 A PROSPECTIVE JUROR: No problem.

22 THE COURT: Anyone else in the front row?

23 A PROSPECTIVE JUROR: I also sat on a case.

24 No problem.

25 THE COURT: Okay. Sir.

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1 A PROSPECTIVE JUROR: Same thing.

2 THE COURT: No problem listening to the
3 rules. In the back anyone?

4 Yes, sir.

5 A PROSPECTIVE JUROR: Civil case.

6 THE COURT: Understand it's a different burden
7 over there, different rules. You will be able to follow
8 the instructions in this case?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Anyone else?

11 As jurors, your verdict must be unanimous. Twelve
12 jurors seldom agree immediately. You will, therefore,
13 be called upon to deliberate. Can each of you promise
14 the parties that at the time deliberations commence, you
15 will participate in the deliberation process.

16 In other words, can you promise the defendant and
17 the People that you're willing to participate in the
18 deliberations, express your own individual views based
19 on the evidence in the case, keep an open mind, and
20 listen to the views of the other jurors?

21 Anybody have a problem with that?

22 Second series of questions concerns your
23 willingness to follow my instructions on the law. In
24 order to be a juror, you do not have to know anything
25 about the law. It is my function to explain the law to

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1 you as it applies in this case. It is your function to
2 determine the facts and to apply the law as I will
3 explain those facts, if you are selected as jurors, I
4 will explain the law in detail to you at the end of the
5 case.

6 However, it is important at this stage for the
7 parties to know that you will follow the law as I give
8 it to you. I will then describe a few basic principles
9 to make sure that you can follow them.

10 Every person accused of a crime is presumed
11 innocent. That is, he stands innocent in the eyes of
12 the law. The People must rebut this presumption, if
13 they can, by the presentation of evidence which
14 convinces you, beyond a reasonable doubt, of the
15 defendant's guilt.

16 In a criminal case, the burden of proof is on the
17 People and remains on the People throughout the trial.
18 The defendant is not required to prove or disprove
19 anything.

20 Are there any of you who cannot in your own mind
21 accord the defendant this presumption of innocence?

22 At the close of the case, I will explain exactly
23 what reasonable doubt means and that you must acquit the
24 defendant if you have a reasonable doubt as to his
25 guilt.

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1 Are there any of you who cannot require that guilt
2 be proven beyond a reasonable doubt before you would
3 convict?

4 However, reasonable doubt does not mean beyond all
5 doubt. In other words, the People are not obligated to
6 prove guilt beyond all doubt. Nothing in life is
7 absolutely certain.

8 Is there any of you who would require absolute
9 certainty of guilt before you would convict?

10 Can you assure me that if you find guilt beyond a
11 reasonable doubt you will return a verdict of guilty?

12 Under our system of law, the defendant is not
13 obligated to testify, or call any witnesses, or explain
14 his actions in any way. Indeed the defendant does not
15 have to present any evidence at all, and you cannot draw
16 any inference unfavorable to the defendant from this
17 fact.

18 Are there any of you who will or might allow the
19 fact that the defendant does not testify or call any
20 witnesses influence your deliberations?

21 Your deliberations will end when you determine
22 whether or not the defendant has been proven guilty
23 beyond a reasonable doubt. Any sentence which may be
24 imposed is a job for the Court exclusively. The jury
25 will have no role to play. You're not permitted to

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1 consider the possibility of punishment in your
2 deliberations, and you may not include any
3 recommendations as to sentence in your verdict.

4 Is there anyone who feels they cannot render a
5 verdict free from sympathy and without considering the
6 possibility of punishment?

7 It is not essential that you agree with or like the
8 principles of law I will set forth for you. Under my
9 oath as a judge, I must instruct you on the law as it
10 applies to this case. Under your oath as jurors, you
11 must accept the law as I explain it to you, whether you
12 agree with it or not, and apply it to the facts as you
13 find them.

14 Is there anyone who cannot accept this principle?

15 We already discussed the police witnesses. You
16 must judge each witness as an individual and determine
17 whether and to what extent you believe his or her
18 testimony.

19 Some of the People's witnesses will be police
20 officers. They'll take the same oath as all the other
21 witnesses. The fact that a witness is a police officer,
22 or wears a police officer's uniform, does not make him
23 or her any more or less believable.

24 Do any of you have any feelings about the police,
25 or has anyone had any experiences which would lead you

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1 to give a policeman or policewoman's testimony any
2 greater or lesser weight than anyone else's testimony?

3 Discussed that already. At this point still
4 everybody understands that and has no problem with it.

5 You will now be asked various questions by the
6 attorneys starting with the Assistant District Attorney,
7 Mr. Hayden. Then the defendant's attorney Mr. Lemke
8 will question you. Their questions like mine are only
9 designed to determine whether you will sit on this
10 case. If they inadvertently ask a question which is
11 embarrassing or very personal, you may say so. If the
12 question is not proper, I will tell you that you do not
13 have to answer it. If the answer involves some personal
14 information, again, I will permit you to answer that in
15 private up here like we have been doing. Okay.

16 Mr. Hayden.

17 (Whereupon, Mr. Hayden questioned the prospective
18 jurors, herein not recorded.)

19 (Whereupon, Mr. Lemke questioned the prospective
20 jurors, herein not recorded.)

21 THE CLERK: Consideration of the first four
22 jurors on the board for the four open seats. People for
23 cause.

24 THE COURT: For cause, the first four.

25 MR. LEMKE: Consent.

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1 MR. HAYDEN: Four.

2 THE COURT: Number four, Lorenzotti.

3 THE COURT: On consent. She had a problem
4 with the graphic photographs.

5 THE COURT: Anybody else?

6 MR. HAYDEN: No.

7 MR. LEMKE: No.

8 THE CLERK: Peremptory, People. People have
9 used fourteen.

10 MR. HAYDEN: No.

11 THE CLERK: Defense.

12 MR. LEMKE: Number one, Mr. Lamastro. Number
13 three, Mr. Donovan.

14 THE CLERK: Two becomes nine.

15 Next three up for the last three seats. Cause
16 People.

17 MR. HAYDEN: Got something wrong. I thought
18 this was Herrera.

19 THE COURT: Your number seven is wrong.
20 Supposed to be Robert Herrera.

21 MR. LEMKE: That is what I have.

22 THE CLERK: I have Herera as a discharge.

23 THE COURT: It was probably the person you got
24 there.

25 THE CLERK: Do you have David Evans on?

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1 THE COURT: No. I think that is a mistake.
2 Evans is gone, Herrera is seven.

3 Do you have any objection?

4 MR. LEMKE: No.

5 MR. HAYDEN: No. Robert Herrera.

6 THE COURT: Do you have cause for those
7 people.

8 MR. HAYDEN: I have none.

9 MR. LEMKE: None.

10 THE CLERK: Peremptory People.

11 MR. HAYDEN: Number six, Vissichelli.

12 THE COURT: Cause, defense.

13 Peremptory, I am sorry.

14 THE CLERK: Peremptory those last two.

15 MR. LEMKE: Tuck.

16 THE CLERK: Herrera becomes ten.

17 THE CLERK: Two seats left, nine and ten --
18 eight and nine rather.

19 People for cause?

20 MR. HAYDEN: No.

21 THE CLERK: Defendant.

22 MR. LEMKE: No.

23 THE CLERK: Peremptory, People, those two.

24 MR. HAYDEN: Nine, Kaliszczjk.

25 MR. LEMKE: Eight, Donegan.

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1 MR. HAYDEN: What is the count?

2 THE CLERK: You used sixteen and Mr. Lemke
3 used seventeen.

4 THE CLERK: Next two for the last two seats,
5 cause.

6 THE COURT: Number ten, consent?

7 MR. HAYDEN: Consent.

8 THE CLERK: David Moore.

9 THE CLERK: Cause on that last one?

10 MR. HAYDEN: No.

11 THE CLERK: Cause, Mr. Lemke, seat number
12 eleven Christian Menjuia.

13 MR. LEMKE: No.

14 THE CLERK: Peremptory challenge, People.

15 MR. HAYDEN: He is out.

16 THE CLERK: He is out, Menjuia.

17 THE CLERK: Next two, People cause.

18 MR. HAYDEN: No.

19 THE CLERK: Defendant.

20 MR. LEMKE: Rely on your discretion. I think
21 pretty much she rehabilitated herself with pictures, I
22 think.

23 MR. HAYDEN: Would you mind if I addressed
24 something for cause? I just like to put something on
25 the record.

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1 THE COURT: I would like to ask, do you have
2 any objection to this?

3 MR. LEMKE: No.

4 MR. HAYDEN: This fellow said something about,
5 I don't know what he was talking about, but something
6 about --

7 THE COURT: Mr. Napol for cause?

8 MR. HAYDEN: Yes.

9 THE COURT: Any objection, number twelve for
10 cause?

11 MR. LEMKE: I will consent.

12 THE COURT: Consent on that.

13 MR. LEMKE: Yes.

14 THE COURT: You had no cause on thirteen.

15 MR. LEMKE: For cause.

16 THE COURT: You're concerned about the
17 photographs?

18 MR. LEMKE: Yes, because she indicated --

19 MR. HAYDEN: Yes.

20 THE COURT: Consent.

21 THE CLERK: One left. People for cause.

22 MR. HAYDEN: No.

23 THE CLERK: Cause.

24 MR. LEMKE: No.

25 THE CLERK: Peremptory.

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1 MR. HAYDEN: No.

2 THE CLERK: Peremptory.

3 MR. LEMKE: Yes, Moynihan.

4 (Whereupon, the following takes place in open
5 court.)

6 THE COURT: Ladies and gentlemen, thank you
7 for your patience. Mr. Paoli in a moment will give you
8 some instructions. Out of the fourteen of you here in
9 the box, two were chosen to sit on this case. And, with
10 respect to everyone else, thank you very much for your
11 time and your patience, and I hope you have a good
12 night.

13 Mr. Paoli.

14 THE CLERK: The following names I'm about to
15 call, you have been selected to sit on this jury.
16 Please remain seated. If your name is called, remain
17 seated. The other jurors, as the Judge said, you're
18 excused with the thanks of the Court. See the court
19 officers at the back door.

20 Jennifer Eishstadt and Robert Herrera, remain
21 seated. You have been chosen for this case and will be
22 sworn momentarily. The other jurors, you're excused.

23 The remaining two jurors, stand and raise your
24 right hand.

25 Do each of you solemnly swear you will try this

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1 action in a just and impartial manner, to the best of
2 your judgment, render a verdict according to the law and
3 evidence so help you God.

4 (Whereupon, the newly selected jurors
5 collectively answered in the affirmative.)

6 THE COURT: I am going to give both of you some
7 admonishments that you will have to follow. You will
8 hear this throughout the course of the trial whenever we
9 break and I am going to ask you to return tomorrow at
10 two. So, come a little bit before two so you can get a
11 parking spot. You can grab a coffee across the street,
12 whatever. Okay.

13 I had told the other jurors to come in. Now we're
14 endeavoring to call them to come at two. We hope in the
15 morning tomorrow we will finish getting the jury and we
16 can start right around two o'clock. Okay.

17 You must not converse among yourselves or with
18 anyone else upon any subject connected with the trial.
19 You must not read or listen to any accounts or
20 discussions of the case in the event that it is reported
21 by the newspapers or other media. You must not view or
22 visit the premises or place where the offense charged
23 was allegedly committed, or any other premises or place
24 involved in the case.

25 Prior to your being discharged, you must not

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1 request, accept, agree to accept or discuss with any
2 person the receiving or accepting of any payment or
3 benefit in consideration for supplying any information
4 concerning the trial.

5 You must promptly report to the Court any incident
6 within your knowledge involving an attempt by any person
7 to improperly influence any member of the jury.

8 You shall not access the Internet or Worldwide Web
9 by any means available to you for the purposes of either
10 learning about this case or to learn about the law and
11 legal issues concerning this case. Obviously you can
12 turn on your computer but don't be looking at trying to
13 find out about the law that pertains to this case or
14 anything about this case.

15 Okay. Have a good night. Need you to follow the
16 sergeant. See you tomorrow at two o'clock.

17 (Whereupon, the trial was adjourned to June 3,
18 2005.)

